

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

**FRANK MUCERINO, III and  
CREEKSIDE TERRACE LLC,**

**Plaintiffs,**

**v.**

**CHARLES JOSHUA DALE MARTIN,**

**Defendant.**

**Case No. 3:21-cv-00284  
Judge Aleta A. Trauger**

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**PLAINTIFFS' MOTION TO STRIKE THE DEFENDANT'S PETITION TO  
DISMISS PURSUANT TO THE TENNESSEE PUBLIC PARTICIPATION  
ACT OR, IN THE ALTERNATIVE, REQUEST FOR LEAVE TO DEPOSE  
DEFENDANT**

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The plaintiffs, Frank Mucerino, III and Creekside Terrace, LLC, hereby move this Court to Strike Defendant Charles Joshua Dale Martin's Petition to Dismiss Pursuant to the Tennessee Public Participation Act (Dkt. 13), or, In the Alternative, Request Leave to Depose Defendant. In support of this Motion, plaintiffs state as follows:

1. This is a defamation and false light case. Plaintiff Frank Mucerino, III is the owner and founder of Creekside Terrace, LLC, a family-owned real estate development company that has developed two residential communities in Burns, Tennessee: (a) Camp Ravine Estates; and (b) The Cottages at Sycamore Ridge. Defendant Mr. Martin defamed the plaintiffs and placed them in a false light by publishing false statements on social media that plaintiffs were ignoring their

obligations associated with the Camp Ravine Estates neighborhood and on the verge of filing bankruptcy.

2. Plaintiffs filed their Complaint on April 7, 2021 (Dkt. 1). On June 14, 2021, the Defendant filed a Petition to Dismiss Pursuant to the Tennessee Public Participation Act (Dkt. 13), which is Tennessee's version of an Anti-SLAPP (Strategic Lawsuit Against Public Participation) statute.

3. As this Court held in *Lampo Group, LLC v. Paffrath*, 2019 WL 3305143 (M.D. Tenn. July 23, 2019), Anti-SLAPP statutes are not applicable in federal court because the Anti-SLAPP statute "directly conflicts with Rule 8 and Rule 12, which define the criteria for assessing the sufficiency of a pleading before discovery." *Lampo Group, LLC v. Paffrath*, 2019 WL 3305143, at \*3 (M.D. Tenn. July 23, 2019) (citing *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1337 (D.C. Cir. 2015) (internal quotations omitted)). Anti-SLAPP statutes and the Federal Rules of Civil Procedure "purport to answer the same question—the applicable standard for granting pre-trial judgment to defendants in federal court." *Id.* Accordingly, the defendant's Petition to Dismiss Pursuant to the Tennessee Public Participation Act should be stricken.

4. In the alternative, should this Court decline to strike the defendant's Petition to Dismiss, plaintiffs respectfully request leave to take the deposition of defendant Mr. Martin relating to the declaration that he filed in support of his Petition to Dismiss. Plaintiffs are entitled to test to assertions made by Mr. Martin in his declaration submitted with his Petition to Dismiss before responding to the

Petition to Dismiss on the merits, which seeks the dismissal of the plaintiffs' complaint and "to sanction the Plaintiffs under the Tennessee Public Participation Act." (Def.'s Petition to Dismiss, pp. 1-2.)

Plaintiffs further rely on the contemporaneously filed Memorandum of Law.

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Strike defendant's "Petition to Dismiss Pursuant to the Tennessee Public Participation Act"; or
2. In the alternative, grant plaintiffs leave to depose Defendant Charles Joshua Dale Martin.

Respectfully submitted,

s/Eric W. Smith

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was forwarded via the Court's electronic filing system on this the 28th day of June 2021, to the following persons:

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